

receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of the normal basis for determining the primary activity.

[36 FR 12612, July 2, 1971, as amended at 37 FR 20822, Oct. 4, 1972; 47 FR 57702, Dec. 28, 1982]

§ 1904.13 Petitions for recordkeeping exceptions.

(a) *Submission of petition.* Any employer who wishes to maintain records in a manner different from that required by this part may submit a petition containing the information specified in paragraph (c) of this section to the Regional Commissioner of the Bureau of Labor Statistics wherein the establishment involved is located.

(b) *Opportunity for comment.* Affected employees or their representatives shall have an opportunity to submit written data, views, or arguments concerning the petition to the Regional Commissioner involved within 10 working days following the receipt of notice under paragraph (c)(5) of this section.

(c) *Contents of petition.* A petition filed under paragraph (a) of this section shall include:

- (1) The name and address of the applicant;
- (2) The address of the place or places of employment involved;
- (3) Specifications of the reasons for seeking relief;
- (4) A description of the different recordkeeping procedures which are proposed by the applicant;
- (5) A statement that the applicant has informed his affected employees of the petition by giving a copy thereof to them or to their authorized representative and by posting a statement giving a summary of the petition and by other appropriate means. A statement posted pursuant to this subparagraph shall be posted in each establishment in the same manner that notices are required

to be posted under § 1903.2(a) of this chapter. The applicant shall also state that he has informed his affected employees of their rights under paragraph (b) of this section;

(6) In the event an employer has more than one establishment he shall submit a list of the States in which such establishments are located and the number of establishments in each such State. In the further event that certain of the employer's establishments would not be affected by the petition, the employer shall identify every establishment which would be affected by the petition and give the State in which they are located.

(d) *Referrals to Assistant Commissioner.* Whenever a Regional Commissioner receives a petition from an employer having one or more establishments beyond the geographic boundary of his region, or a petition from a class of employers having any establishment beyond the boundary of his region, he shall refer the petition to the Assistant Commissioner for action.

(e) *Additional Notice, Conferences.* (1) In addition to the actual notice provided for in paragraph (c)(5) of this section, the Assistant Commissioner, or the Regional Commissioner, as the case may be, may provide, or cause to be provided, such additional notice of the petition as he may deem appropriate.

(2) The Assistant Commissioner or the Regional Commissioner, as the case may be, may also afford an opportunity to interested parties for informal conference or hearing concerning the petition.

(f) *Action.* After review of the petition, and of any comments submitted in regard thereto, and upon completion of any necessary appropriate investigation concerning the petition, if the Regional Commissioner or the Assistant Commissioner, as the case may be, finds that the alternative procedure proposed will not hamper or interfere with the purposes of the Act and will provide equivalent information, he may grant the petition subject to such conditions as he may determine appropriate, and subject to revocation for cause.

(g) *Publication.* Whenever any relief is granted to an applicant under this Act, notice of such relief, and the reasons

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therefor, shall be published in the FEDERAL REGISTER.

(h) *Revocation.* Whenever any relief under this section is sought to be revoked for any failure to comply with the conditions thereof, an opportunity be afforded to the employers and affected employees, or their representatives. Except in cases of willfulness or where public safety or health requires otherwise, before the commencement of any such informal proceeding, the employer shall:

(1) Be notified in writing of the facts or conduct which may warrant the action; and

(2) Be given an opportunity to demonstrate or achieve compliance.

(i) *Compliance after submission of petitions.* The submission of a petition or any delay by the Regional Commissioner, or the Assistant Commissioner, as the case may be, in acting upon a petition shall not relieve any employer from any obligation to comply with this part. However, the Regional Commissioner or the Assistant Commissioner, as the case may be, shall give notice of the denial of any petition within a reasonable time.

(j) *Consultation.* There shall be consultation between the appropriate representatives of the Occupational Safety and Health Administration and the Bureau of Labor Statistics in order to insure the effective implementation of this section.

[36 FR 12612, July 2, 1971, as amended at 37 FR 737, Jan. 18, 1972; 42 FR 65166, Dec. 30, 1977]

§ 1904.14 Employees not in fixed establishments.

Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of §§1904.2, 1904.4, and 1904.6 with respect to such employees by:

(a) Maintaining the required records for each operation or group of operations which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;

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(b) Having the address and telephone number of the central place available at each worksite; and

(c) Having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail.

[37 FR 20822, Oct. 5, 1972]

§ 1904.15 Small employers.

An employer who had no more than ten (10) employees at any time during the calendar year immediately preceding the current calendar year need not comply with any of the requirements of this part except the following:

(a) Obligation to report under §1904.8 concerning fatalities or multiple hospitalization accidents; and

(b) Obligation to maintain a log of occupational injuries and illnesses under §1904.2 and to make reports under §1904.21 upon being notified in writing by the Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

[42 FR 38568, July 29, 1977, as amended at 47 FR 145, Jan. 5, 1982; 47 FR 14706, Apr. 6, 1982; 62 FR 44552, Aug. 22, 1997]

§ 1904.16 Establishments classified in Standard Industrial Classification Codes (SIC) 52-89, (except 52-54, 70, 75, 76, 79 and 80).

An employer whose establishment is classified in SIC's 52-89, (excluding 52-54, 70, 75, 76, 79 and 80) need not comply, for such establishment, with any of the requirements of this part except the following:

(a) Obligation to report under §1904.8 concerning fatalities or multiple hospitalization accidents; and

(b) Obligation to maintain a log of occupational injuries and illnesses under §1904.21, upon being notified in writing by the Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

[47 FR 57702, Dec. 28, 1982]